EXEMPTION OF FEDERAL HOMESTEAD FROM LIABILITY FOR DEBTS CONTRACTED PRIOR TO PATENT. — Section 2296 of the United States Revised Statutes provides: "No lands acquired under the provisions of this Act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor." [1] Under the literal interpretation put upon this enactment in a recent decision by the United States Supreme Court,[2] until the patent does issue, the claimant may hold the land and laugh at his creditors. Other courts have construed the statute in the same way.[3] But some courts have sagaciously held the land liable for debts contracted after the issuance of the final certificate, even though before the patent.[4]

The patent is the legal conveyance. Until it issues, the legal title is in the United States.[5] However, when the entryman has done everything necessary to entitle him to the patent, even before the patent issues he has a complete equitable title.[6] Indeed, many states have statutes permitting one in such a position to maintain ejectment.[7] Congress cannot

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[1] Act of May 20, 1862. 12 STAT. L. 392. Except this provision, there is nothing in the federal laws indicating the remotest difference between lands patented under the Homestead Act and other privately owned lands within the state. See Buchser *v.* Morss, 196 Fed. 577, 579 (1912).

[2] Ruddy *v.* Rossi, No. 17, October Term, U. S. Sup. Ct. (1918). See RECENT CASES, page 730.

[3] Barnard *v.* Boller, 105 Cal. 214, 38 Pac. 728 (1894); Wallowa National Bank *v.* Riley, 29 Ore. 289, 45 Pac. 766 (1896); Sprinkle *v.* West, 62 Wash. 587, 114 Pac. 430, 34 L. R. A. (N. S.) 404 (1911); Grames *v.* Consolidated Timber Co., 215 Fed. 785 (1914). See *In re* Cohn, 171 Fed. 568, 570 (1909).

The same court which laid down this literal interpretation in *In re* Cohn, *supra*, later held that the exemption must be confined to the debts of the entrywoman, and did not cover those of her husband contracted before patent. *In re* Parmeter's Estate, 211 Fed. 757 (1914). This construction, while obviously correct, is against the sweeping terms of the statute.

In Brandhoeffer *v.* Bain, 45 Neb. 781, 64 N. W. 213 (1895), the debt was contracted in 1876 and the patent issued in 1878. The entryman conveyed away the land in 1885 and reacquired title in 1892. It was held that the land was still not liable. *Accord*, Van Doren *v.* Miller, 14 S. D. 264, 85 N. W. 187 (1901). *Contra*, De Lany *v.* Knapp, 111 Cal. 165, 43 Pac. 598 (1896). It is refreshing to find a court showing such a wholehearted respect for a statute; but in playing this judicial Ruth to the legislative Naomi, the court reaches a result entirely foreign to the purposes of the Act.

[4] Struby-Estabrook Mercantile Co. *v.* Davis, 18 Colo. 93, 31 Pac. 495 (1892); Leonard *v.* Ross, 23 Kan. 292 (1880); Johnson *v.* Borin, 7 Kan. App. 365, 54 Pac. 989 (1898); Flanagan *v.* Forsythe, 6 Okla. 225, 50 Pac. 152 (1897). See Kansas Lumber Co. *v.* Jones, 32 Kan. 195, 4 Pac. 74 (1884).

[5] Bagnell *v.* Broderick, 13 Pet. (U. S.) 436 (1839); Gibson *v.* Chouteau, 13 Wall. (U. S.) 92 (1871); United States *v.* Schurz, 102 U. S. 378 (1880); Michigan Land and Lumber Co. *v.* Rust, 168 U. S. 589 (1897). See Gould *v.* Tucker, 18 S. D. 281, 100 N. W. 427 (1904).

[6] Carroll *v.* Safford, 3 How. (U. S.) 441 (1845); Lytle *v.* Arkansas, 9 How. (U. S.) 314 (1850); Garland *v.* Wynn, 20 How. (U. S.) 6 (1857); Lessee of French *v.* Spencer, 21 How. (U. S.) 228 (1858); Lindsey *v.* Hawes, 2 Black (U. S.) 554 (1862); Witherspoon *v.* Duncan, 4 Wall. (U. S.) 210 (1866); Simmons *v.* Wagner, 101 U. S. 260 (1879); Deffeback *v.* Hawke, 115 U. S. 392 (1885); Benson Mining Co. *v.* Alta Mining Co., 145 U. S. 428 (1891); United States *v.* Detroit Lumber Co., 200 U. S. 321 (1905); Gourley *v.* Countryman, 18 Okla. 220, 90 Pac. 427 (1907); Budd *v.* Gallier, 56 Ore. 42, 89 Pac. 638 (1907); S. S. Dale & Sons *v.* Griffith, 93 Miss. 573, 46 So. 543 (1908).

[7] The language in some of the cases suggests that legal title passes with the certificate and the patent is merely evidence. See Goodlet *v.* Smithson, 5 Porter (Ala.) 245, 249 (1837). This is an erroneous conclusion from the well-established doctrine that the patent when issued relates back to the inception of the rights of the patentee, so

have intended that an administrative delay, due to the rush of business or to negligence in the Land Department and lasting perhaps for years, should change the substantive rights of the parties.[8] "Legislative bodies rarely take into consideration the period between the time when, under the law, executive officers should perform clerical duties, and the time when such duties are actually performed." [9] While the terms of the enactment are unambiguous, the courts are not precluded from correcting the legislative misstatement. "The intention of the lawmaker is the law," [10] anything in the terms of the statute to the contrary notwithstanding.[11]

A far more fascinating problem is raised by Mr. Justice Holmes' opinion. He says:

"My question is: When land has left the ownership and control of the United States and is part of the territory of a State not different from any privately owned land within the jurisdiction and no more subject to legislation on the part of the United States than any other land, on what ground is a previous law of Congress supposed any longer to affect it in a way that a subsequent one could not? This land was levied upon, not on the assertion that any lien upon it was acquired before the title passed from the United States, but merely as any other land might be attached for a debt that Rossi [the creditor] had a right to collect, after the United States had left the premises. I ask myself what the United States has to do with that. There is no condition, no reserved right of re-entry, no reversion in the United States, saved either under the Idaho law as any private grantor might save it, or by virtue of antecedent title. All interest of the United States as owner is at an end. It is a stranger to the title. Even in case of an escheat the land would not go to it, but would go to the State. Therefore the statute must operate, if at all, purely by way of legislation, not as a qualification of the grant. If § 2296 is construed to apply to this case, there is simply the naked assumption of one sovereignty to impose its will after whatever jurisdiction or authority it had has ceased and the land has come fully under the jurisdiction of what for this purpose is a different power. It is a pure attempt to regulate the alienability of land in Idaho by law,

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far as may be necessary to cut off intervening claimants. Stark *v.* Starrs, 6 Wall. (U. S.) 402 (1867).

[8] Section 2324, Revised Statutes, provides: "On each claim located after May 10, 1872, and *until a patent has been issued* therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. . . ." Plaintiff had a final certificate but no patent for his land, and had failed to do the one hundred dollars' worth of work during a year. *Held*, that he did not have to do the work after obtaining the certificate. Benson Mining Co. *v.* Alta Mining Co., note 6, *supra*. *Accord*, Aurora Hill Con. Min. Co. *v.* 85 Mining Co., 34 Fed. 515 (1888); Deno *v.* Griffin, 20 Nev. 249 (1889). See SICKELS, MINING DECISIONS, 377, 384.

It is interesting to note that an exemption in the Timber-Culture Act similar to that in the Homestead Act covers only "debts contracted prior to the issuing of the final certificate." Act of March 3, 1893, c. 208, 27 STAT. AT L. 593, 5 U. S. COMP. STAT. 1916, § 5116.

[9] Per Keaton, J., in Flanagan *v.* Forsythe, note 4, *supra*.

[10] Per Swayne, J., in Smythe *v.* Fiske, 23 Wall. (U. S.) 374, 380 (1874).

[11] United States *v.* Kirby, 7 Wall. (U. S.) 482 (1868); Lionberger *v.* Rouse, 9 Wall. (U. S.) 468 (1869); Church of the Holy Trinity *v.* United States, 143 U. S. 457 (1892); Hawaii *v.* Mankichi, 190 U. S. 197 (1903).

without regard to the will of Idaho, which we must assume on this record to authorize the levy if it is not protected by an act of Congress occupying a paramount place." [12]

Authority, such as it is, is against this view.[13] The exemption could conceivably be enforced in one of two ways: first, as a qualification of the grant, or secondly, as legislation. The courts in giving it effect did not clearly comprehend the problem. They all point to the situation before the patent issues. Judge Dillon said: "It will be observed that Congress does not attempt to exempt the land from debts contracted after the patent has issued. . . . Before the title has thus passed, Congress, under its power to dispose of the public lands, may prescribe the terms and conditions upon which the disposition shall be made. . . ." [14] This and similar language from other courts is indicative of the weakness of their position. They apparently consider this exemption as a qualification of the grant,[15] and this possibility has been buried by Mr. Justice Holmes beneath the granite of unimpeachable reasoning, without so much as a *requiescat in pace* from the majority of the court.

Can the exemption take effect as legislation? We must really look at the situation after the patent has divested the United States of title, when the levy is attempted. That is the time when the congressional enactment is to shield the land. If, at this date, Congress can control the alienability of the land for debts contracted prior to the patent, why not for debts contracted, say, within two years after the patent? The date of issue of the patent is not, in the fortunes of the settler, the turning point at which he ceases to need protection from his creditors. The Federal Constitution provides: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." [16] Ours is a territorial scheme of government. It has been frequently asserted that the United States, in holding land within a state, has nothing in the nature of municipal sovereignty.[17] It must stand as a private proprietor,

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[12] Per Holmes, J., in Ruddy *v.* Rossi, note 2, *supra.* It is regrettable that the opinion of the court, written by Mr. Justice McReynolds, did not consider more particularly this argument.

[13] Sorrels *v.* Self, 43 Ark. 451 (1884); Miller *v.* Little, 47 Cal. 348 (1874); Russell *v.* Lowth, 21 Minn. 167 (1874); Gile *v.* Hallock, 33 Wis. 523 (1873); Seymour *v.* Sanders, 3 Dill. (Fed.) 437 (1874).

[14] Per Dillon, J., in Seymour *v.* Sanders, 3 Dill. (Fed.) 437, 442 (1874). Much the same language appears in Sorrels *v.* Self, 43 Ark. 451, 454 (1884).

[15] "To deny to Congress the power to make a valid and effective contract of this character with the homestead claimant would materially abridge its power of disposal. . . ." Per Crockett, J., in Miller *v.* Little, 47 Cal. 348, 351 (1874).

"Indeed, the exemption created by the act of Congress has never been looked upon as a homestead exempt at all. It is in the nature of a condition attached to the grant, in virtue of the power of the Federal government relating to the primary disposal of the soil, rather than in virtue of any police power vested in the government." Per Rudkin, J., in Ritzville Hardware Co. *v.* Bennington, 50 Wash. 111, 96 Pac. 826 (1908). This case, holding that the rule, exempting for a reasonable time the proceeds from the sale of a homestead exempt under the state laws, does not include the proceeds from the sale of a federal homestead, is most illuminating.

[16] Art. IV, § 3, par. 2.

[17] Pollard's Lessee *v.* Hagan, 3 How. (U. S.) 212 (1845); Omaechevarria *v.* Idaho, 246 U. S. 343 (1917); United States *v.* Railroad Bridge Co., 27 Fed. Cas. 686 (1855). See Camfield *v.* United States, 167 U. S. 518 (1897); Jones *v.* Florida C. & P. R. Co.,

with whatever additional power is included in the "power to dispose of and make all needful rules and regulations" respecting these lands. This clause properly construed should give Congress control over the public lands while they are public lands, but should confer no power over land which has ceased to be a part of the public domain.[18]

THREATS TO TAKE THE LIFE OF THE PRESIDENT. — The meaning of the word "threat," as used in the federal legislation of February 14, 1917,[1] obviously differs from the usual legal meaning. In the cases of the statutory offense of threatening a private individual,[2] extortion,[3] robbery by threat,[4] or the avoidance of instruments or acts as induced by threats,[5] the menace must be communicated to the threatened person and must be such as at least to influence the mind of a reasonable man. In the case of an assault[6] the words must in addition import to the reasonable hearer an intention to execute it almost immediately; and hence a threat of harm conditioned upon a future event cannot constitute an assault.[7] But to interpret the word "threat" as used in this law of Congress to mean a "menace of such a nature as to unsettle the mind of the person on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent," [8] would de-

41 Fed. 70, 72 (1889); Minnesota *v.* Bachelder, 5 Minn. 223, 235 (1861). *Cf.* Van Brocklin *v.* Tennessee, 117 U. S. 151 (1885); Kansas *v.* Colorado, 206 U. S. 46 (1906).

[18] The power "to dispose of" includes the power to lease. United States *v.* Gratiot, 14 Pet. (U. S.) 526 (1840).

"[Congress] had no power whatever to enlarge the rights of the vendees of the United States as against rights already vested in prior purchasers. It could in no way authorize any encroachment by the grantees of the United States upon, or injury to, the property of other private parties." Per Sawyer, J., in Woodruff *v.* North Bloomfield Min. Co., 18 Fed. 753, 771 (1884). *Cf.* Wilcox *v.* Jackson, 13 Pet. (U. S.) 498, 517 (1839).

[1] The Act provides: "That any person who knowingly and willfully deposits or causes to be deposited for conveyance in the mail or for delivery from any postoffice or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States, or who knowingly and willfully otherwise makes any such threat against the President, shall upon conviction be fined not exceeding $1,000 or imprisoned not exceeding five years, or both." 39 STAT. 919, c. 64.

Constitutionally the Act may be supported on the broad ground of a right in the federal government to punish offenses aimed at its integrity, but certainly on the narrower ground of a right to protect its officers. *In re* Neagle, 135 U. S. 1 (1889). See Biklé, "The Jurisdiction of the United States over Seditious Libel," 41 Am. L. Reg. (N. S.) 1. In United States *v.* Metzdorf, 252 Fed. 933 (Dist. Ct., Mon., 1918), the indictment failed on the strange ground that it did not state that the alleged threat was uttered of the President in his official character. The court held that Congress had no power to protect its officers in their private capacities. Thus jurisdiction for the murder of a federal official would be made to turn on the motive of the killing.

[2] State *v.* McGee, 80 Conn. 614, 69 Atl. 1059 (1908).

[3] People *v.* Williams, 127 Cal. 212, 59 Pac. 581 (1899).

[4] Rex *v.* Fuller, Russ. & Ryan's Crown Cases, 408 (1820).

[5] Robinson *v.* Gould, 11 Cush. (Mass.) 55 (1853).

[6] Stephens *v.* Myers, 4 Carr. & Payne 349 (1830); Townsdin *v.* Nutt, 19 Kan. 282 (1877).

[7] Tuberville *v.* Savage, 1 Mod. 3 (1669). *Cf.* Commonwealth *v.* Eyre, 1 Serg. & R. (Pa.) 347 (1815).

[8] In United States *v.* French this definition was applied, erroneously, it is believed, to the Act of Feb. 14, 1917. 243 Fed. 785 (So. Dist. Fla., 1917).